

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O.O.C.J.

NOTICE OF MOTION NO. 109 OF 2006  
IN  
WRIT PETITION NO.158 OF 2006

Guru Swarup Srivastava and others. .. Petitioners  
v/s.

The Directorate of Enforcement and others. .. Respondents

Mr.R.A.Dada, Senior Counsel with Mr.B.M.Chatarjee i/by Mr.Debarati Nag  
for the petitioners.

Mr.Y.R.Mishra with Mr.A.S.Rao for respondents.

CORAM : R.M. LODHA &  
J.P.DEVADHAR, JJ.

DATED : 6TH MARCH, 2006.

P.C.

Heard Mr.R.A.Dada, the learned senior counsel for the petitioners  
and Mr.Y.R.Mishra, the learned counsel for the respondents.

2. By this notice of motion, the third petitioner Mehar Swarup  
Srivastava prays for direction to the respondents to return his passport in  
the same condition as it was seized on such terms and conditions as this  
court may deem fit and proper.

3. The searches were carried out by the Enforcement Directorate in the  
office and residence of the first petitioner on 7.7.2005 under the Foreign

Exchange Management Act, 1999 (FEMA 1999). By means of the writ petition filed by the petitioners, they have challenged the searches carried out on 7<sup>th</sup> July, 2005 and the seizure of the material including material records documents, books of accounts, articles, passports etc. The writ petition has been admitted by this court.

4. It appears that the investigation pursuant to the searches conducted on 7<sup>th</sup> July, 2005 commenced and the statement of first petitioner was recorded on 8<sup>th</sup> July, 2005, 13<sup>th</sup> July, 2005, 18<sup>th</sup> July, 2005, 26<sup>th</sup> July, 2005, 13<sup>th</sup> September, 2005 and 10<sup>th</sup> October, 2005. Thereafter, the third petitioner who happens to be the son of the first petitioner was summoned on 17<sup>th</sup> October, 2005. The third petitioner authorised his father-petitioner No.1 to appear before the concerned authority. Consequently, the first petitioner appeared and his statement was recorded on 18<sup>th</sup> October, 20<sup>th</sup> October, 24<sup>th</sup> October and 22<sup>nd</sup> November, 2005. The documents demanded by the Respondent No.2-Assistant Director, Directorate of Enforcement, FEMA were also furnished on 25<sup>th</sup> January, 2006. The statement of the third petitioner has also been recorded on 3<sup>rd</sup> March, 2006. By the order dated 7<sup>th</sup> February, 2006, this court granted six weeks time to the respondent No.2 to complete the investigation and issue an appropriate show-cause notice to the petitioners, if necessary. The learned counsel for the respondents submits that by 27<sup>th</sup> March, 2006, the investigation shall be completed. We accept his statement.

5. The necessity of taking out the present notice of motion for release of

the passport to the petitioner No.3 seems to have arisen as the petitioner No.3 got married on 25<sup>th</sup> February, 2006; he had made honeymoon plan from 8<sup>th</sup> March, 2006 to 26<sup>th</sup> March, 2006. Itinerary of the petitioner No.3 and his wife as disclosed to the respondents is thus-

Itinerary of Mr.Mehar Srivastava & his wife

| <b>Date/Time</b>  | <b>Departure from</b>  | <b>Arrival At</b>      | <b>Details of Flight/Stays</b>                                                                                    |
|-------------------|------------------------|------------------------|-------------------------------------------------------------------------------------------------------------------|
| 8/3/06-1000       | Mumbai                 | London                 | Flying by flight number 9W 0118 of Jet Airways. Halt at London for 1 night at Transit Hotel provided by Airlines. |
| 10/03/06-10.45 am | London (Gatwick)       | St.Lucia (West Indies) | Flying by flight number VS031, of Virgin Airlines. Halt at Sandals Regency Gold Resort for 7 days.                |
| 17/03/06-18.25    | St.Lucia (West Indies) | London (Gatwick)       | Flying by flight number VS032 of Virgin Airlines. Halt at Holiday Inn London for 7 days.                          |
| 26/3/06-0855      | London                 | Mumbai                 | Flying back by flight number 9W 0117 of Jet Airlines.                                                             |

6. That the petitioner No.2 is employed as teacher for the last more than 15 years is not in dispute. The petitioner Nos.1 and 2 have no objection if their passports remain seized by the respondents. They are also prepared to give an undertaking to ensure the return of the petitioner No.3 who is their only son.

7. The learned senior counsel for the petitioners also submitted that petitioner No.3 is ready and willing to undertake that until further orders, he will not deal with the foreign bank accounts in any manner whatsoever.

8. The learned counsel for the respondents conceded that under the FEMA, 1999, even if the petitioners are found guilty of breach of law, they cannot be prosecuted.

9. Taking into consideration all relevant factors and aspects, we are satisfied that the passport may be released to the respondent No.3 temporarily to enable him to fly to the places as per the itinerary noticed above from 8<sup>th</sup> March, 2006 to 26<sup>th</sup> March, 2006.

10. The respondents are directed to temporarily release the passport of the petitioner No.3 forthwith on the following conditions:

- (a) The petitioner No.3 shall give an undertaking that he will return the passport to the respondent No.2 on or before 30<sup>th</sup> March, 2006.
- (b) The petitioner Nos.1 and 2 shall file an undertaking before this court that they shall ensure the return of the petitioner No.3 by 26<sup>th</sup> March, 2006 as per the Itinerary noticed above.
- (c) The petitioner No.3 is restrained from dealing with the foreign bank accounts in any manner whatsoever until further orders.

Notice of motion stands disposed of.

(R.M.LODHA, J.)

